

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID KINDER, AMANDA MALLARE
AND SCOTT CASEY

Application No. 09/515,272

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

Grounds of Rejection, Incorporation By Reference

On January 23, 2007, an Examiner's Answer was mailed in response to the Appeal Brief received November 20, 2006. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). The section entitled Grounds of Rejection does not identify each grounds of rejection maintained by the examiner. The Examiner further states that the rejection is fully set forth in the Final Rejection mailed November 11, 2005. Incorporation of a rejection by reference is improper.

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According to the MPEP § 1207.02:

An examiner's answer should not refer, either directly or indirectly, to any prior Office action without fully restating the point relied on in the answer.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated August 20, 2001.

There is no indication on the record that the above Information Disclosure Statement has been acknowledged by the Examiner. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed November 15, 2006;
- 2) issue and mail a Supplemental Examiner's Answer that corrects the Ground of Rejection section;

- 3) consider the Information Disclosure Statement filed August 20, 2001; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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By: Patrick J. Nolan
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/tsj

cc: TROP PRUNER & HU, PC
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TX 77057-2631